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Legal Alerts

Pennsylvania Court Upholds FTC Rule on Employee Noncompetes

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On July 23, the US District Court for the Eastern District of Pennsylvania declined to issue a preliminary injunction to pause the implementation of the FTC's final rule that would invalidate most employee noncompetes. This decision is an important step leading to implementation of the final rule on September 4.

The Pennsylvania judge found that the plaintiff in *ATS Tree Services v. Federal Trade Commission* failed to show that it would prevail on the merits of its challenge to the final rule. Analyzing the goal of the statute creating the FTC and the FTC's purpose, the court stated that "the FTC is empowered to make both procedural and substantive rules as is necessary to prevent unfair methods of competition." The court also downplayed the risk of "irreparable harm" to the plaintiff if the final rule went into effect: "the alleged harm of possibly choosing to scale back [the plaintiff's] training program is based upon a speculative risk" that employees could resign absent noncompetes, and therefore the harm is "neither irreparable nor immediate."

The *ATS Tree Services* decision is at odds with the July 3 ruling from *Ryan LLC*, where a judge in the Northern District of Texas came to the opposite conclusions regarding the plaintiffs' likelihood of success on the merits. Both rulings are likely to be appealed. The Third Circuit Court of Appeals would review an appeal in *ATS Tree Services*, and the Fifth Circuit Court of Appeals would review an appeal in *Ryan LLC*. If the two appellate courts disagree, the US Supreme Court could take up the case.

However, the appeals process is lengthy and uncertain. The preliminary injunction entered in *Ryan LLC* is still valid but **only applies to the parties who filed the Texas lawsuit**. As it stands, the FTC's final rule will take effect on September 4, 2024 for all employers who were not parties to the Texas lawsuit. Employers must continue to comply with applicable state requirements governing noncompetes and be prepared to implement the final rule. Employers should carefully draft new employment, confidentiality and other agreements that contain post-employment restrictions, and review similar existing agreements, to ensure compliance with the final rule and state laws.

If you have questions about managing compliance with noncompete laws or any other employment or labor issues, please contact any member of the Foster Garvey Labor, Employment & Immigration Group.

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